Supreme Court of the United States

OCTOBER TERM, 1949

No. 403

RUDOLF REIDER,

Petitioner and Appellant Below,

versus

GUY A. THOMPSON, Trustee, MISSOURI PACIFIC RAILROAD COMPANY, Debtor,

Respondent and Appellee Below.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

EBERHARD P. DEUTSCH,
Counsel for Petitioner.

DEUTSCH, KERRIGAN & STILES and
MALCOLM W. MONROE,
Of Counsel.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

I

Question Presented

The important question of law presented for determination in this proceeding is:

Is a domestic rail carrier, which issues its own separate, independent, through bill of lading for carriage of property

from a United States port to a point in another state, subject to the provisions of the Carmack Amendment to the Interstate Commerce Act, when the shipment originated in a foreign country under an ocean bill of lading designating the United States port as the desination of the goods?

II

Summary Statement of Matter Involved

Rudolf Reider brought this suit against Guy A. Thompson, as Trustee of the Missouri Pacific Railroad Company, Debtor, under the Carmack Amendment to the Interstate Commerce Act,[1] for damage to a shipment of skins and wool. The complaint alleges that the carrier received the consignment in good order and condition at New Orleans, Louisiana, issuing its through bill of lading for carriage of the goods by its own and specified connecting lines to Boston, Massachusetts; that upon arrival at Boston, the shipment was found to have been damaged by water, stains and mold, for which damage reimbursement is sought.[2]

The bill of lading recites that the goods were received by it at New Orleans from "H. P. Lambert Co. Inc. X SS 'Rio Parana' ", consigned in bond to the Collector of Customs at Boston for H. P. Lambert Co., Inc.[3]

The ocean bill of lading[4] had named Emilio Rosler S. R. L. as the shipper, Buenos Aires as the port of ship-

[1] 34 Stat. 593, 49 USC 20(11).
[2] R 2-6.
[3] R 5-6.
[4] R 10-13.

ment, and New Orleans as the port of discharge. The space provided in the bill for an ultimate destination of the goods in event of shipment beyond the port of destination was left blank. The consignee was designated in these words: "Shipped to the order of: The First National Bank of Boston; Notice of arrival should be addressed to (if consigned to Shipper's Order) Rudolf Reider 29 South Street Boston, Mass. U. S. A." The stated ocean freight was payable at Buenos Aires.

The respondent below filed a motion to dismiss on the ground that the complaint failed to state a claim upon which relief could be granted,[5] his contention being that this was a "foreign shipment", having originated in a foreign country and was, therefore, not subject to the provisions of the Carmack Amendment as to the rail carriage from New Orleans to Boston.

The district court sustained the motion and dismissed the action.[6] Petitioner appealed from this decree,[7] and on July 20, 1949, the Court of Appeals for the Fifth Circuit (McCord, J.) affirmed the decree, Judge Hutcheson concurring and Judge Sibley dissenting, each judge handing down a separate opinion.[8]

Judge McCord held that the Carmack Amendment does not apply to an interstate shipment within the United States if the goods originated in a foreign country, the domestic bill of lading being merely supplemental to what

[5] R 7.
[6] R 14.
[7] R 15-18.
[8] Tr 21-32.

is in effect a through foreign shipment, even though the foreign bill of lading designated the United States port of entry as the destination of the goods.[9]

Judge Hutcheson, "at long last, but not without some slight misgivings, ranged" himself "with (Judge) McCord". He relied on the decisions which hold that shipments moving in the United States under through bills of lading issued in foreign countries where the shipments originated, are governed neither by the Carmack Amendment nor the Federal Bills of Lading Act; but Judge Hutcheson conceded that the instant case, distinguishably, falls within the strict letter of the Carmack Amendment.[10]

Judge Sibley dissented because "the plain, unambiguous words of Section 20(11) of the Interstate Commerce Act as amended . . . uphold this suit"; the railroad being a carrier subject to the Act, "which received this property at New Orleans, a point within a state for transportation to Boston, a point in another state, . . . issued its receipt or bill of lading as it was bound to do, and incurred liability for any damage to such property caused by it or any other common carrier to which it delivered the property on the way to Boston, the destination named in its bill of lading".[11]

He called attention to the fact that the ocean carrier had not issued a through bill of lading to Boston, that there was no privity between the ship and the railroad, and that the contract of rail carriage was new, separate and distinct from that for the ocean carriage.[12]

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[9] Opinion, pp. 3-5.
[10] Opinion, pp. 5-6.
[11] Opinion, pp. 7-8.
[12] Opinion, p. 8.

Judge Sibley further pointed the distinction between the instant case and those relied on by the district judge and in the majority opinion, one group of which involved the question, not of the applicability of the Carmack Amendment to the carrier, but whether the shipment being considered was foreign as opposed to intrastate commerce, and accordingly subject or not to the exclusive right of Congress to regulate it. In the others, such as *Alwine vs Pennsylvania R. Co.*, [13] the shipments moved either to or from foreign countries under through bills of lading.[14]

III

Reasons Relied on for Allowance of the Writ

The Court of Appeals for the Fifth Circuit, by a divided court, has decided a significant question of interpretation and application of an important section of the Interstate Commerce Act, which has not been, but should be, settled by this court.

The importance of the question is emphasized by the fact that the decision may well have repercussions throughout the business and financial world in the United States and elsewhere, since it involves the status of all imports which pass beyond the country's ports of entry.

The case does not present merely the liability or non-liability of the instant carrier, but the broad question as to whether or not American importers are to be denied

[13] 141 Pa. Super. 558.
[14] Opinion, pp. 9-10.

the right to pursue, against domestic carriers, the remedies given them in such cases by the Carmack Amendment.

This case will stand as the first decision on the question. It has not even actually been decided by the Court of Appeals. Completely divergent views are held by two members of that court, as expressed in the majority and dissenting opinions. The conurring judge did not resolve this conflict, but admittedly "not without some slight misgivings", lent his weight to what thus became the majority conclusion, if not the majority view.

There can, in any event, hardly be any doubt as to the importance of this question of interpretation of the Interstate Commerce Act, not only to shippers and holders of such bills of lading, but to the railroads themselves, and to underwriters. The point has not been, and should unquestionably be, settled by this court.

IV

Basis of Jurisdiction

Jurisdiction is invoked under section 1254 of Title 28 of the United States Code.

The original opinions of the Court of Appeals for the Fifth Circuit were filed July 20, 1949; petition for rehearing was filed August 9, 1949; and rehearing was denied August 22, 1949.

Wherefore petitioner prays that a writ of certiorari issue under the seal of this court, directed to the United

States Court of Appeals for the Fifth Circuit, commanding said court to certify and send to this court a full and complete transcript of the record and of the proceedings of said Court of Appeals for the Fifth Circuit, had in the case numbered and entitled on its docket, No. 12,739, *Rudolf Reider, Appellant, vs Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, Debtor, Appellee*, to the end that this cause may be reviewed and determined by this court as provided for by the statutes of the United States; and that the judgment herein of said Court of Appeals for the Fifth Circuit be reversed by this court, and for such other and further relief as this court may deem proper.

EBERHARD P. DEUTSCH,
Counsel for Petitioner.

New Orleans,
October 8, 1949.

DEUTSCH, KERRIGAN & STILES and
MALCOLM W. MONROE,
Of Counsel.

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1949

No. .....

RUDOLF REIDER,
Petitioner and Appellant Below,

versus

GUY A. THOMPSON, Trustee, MISSOURI PACIFIC RAILROAD COMPANY, Debtor,
Respondent and Appellee Below.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinions of Courts Below

The majority, concurring and dissenting opinions of the judges of the Court of Appeals for the Fifth Circuit, annexed to the record, have not as yet, as far as counsel can learn, been reported.

No opinion was rendered by the judges denying the petition for rehearing, or by the judge disenting from that

ruling. Nor was an opinion rendered by the judge of the District Court for the Eastern District of Louisiana, other than a citation of cases in support of his order.[1]

II

Jurisdiction

Jurisdiction is invoked under section 1254 of Title 28 of the United States Code.

The opinions of the Court of Appeals for the Fifth Circuit were filed July 20, 1949. A petition for rehearing was filed August 9, 1949, and rehearing was denied, with one judge dissenting, on August 22, 1949.

As shown in the petition for the writ of certiorari in support of which this brief is filed, the Court of Appeals has decided a significant question of interpretation and application of an important section of the Interstate Commerce Act, and this question has never been, and unquestionably should be, settled by this court.

This case is the first decision by any court on the important question involved. The question has not even actually been decided by the Court of Appeals. Directly opposing views were taken by two members of the court as expressed in the majority and disenting opinions; and the concurring judge did not effectively resolve this conflict. Admittedly, "not without some slight misgivings", he gave the weight of his concurrence to form a majority con-

[1] R 14.

clusion, although his reasons differed from those expressed in the "majority" opinion.

Such an important question as is presented here, affecting, as it does, not only the shippers and holders of such bills of lading, but also the railroads themselves, and all underwriters, should not remain in the nebulous state in which the opinion of the Court of Appeals places it, but should be resolved decisively by this court.

III

Statement of the Case

The preceding petition for writ of certiorari contains a "Summary Statement of the Matter Involved",* which is adopted, without repetition, as the "Statement of the Case" of this brief.

IV

Specification of Errors

The court erred in holding that a domestic rail carrier which issues its own separate, independent, through bill of lading for carriage of property from a United States port to a point in another state, is not subject to the provisions of the Carmack Amendment to the Interstate Commerce Act as to damage to the consignment sustained on its own or connecting rail lines, when the shipment originated in a foreign country under an ocean bill of lading designating the United States port as the destination of the goods.

* Pp. 2-3 ante.

V

Summary of the Argument

Point A

When goods arrive from a foreign country at a port in the United States to which they are consigned, and from which they are shipped to a point in a different state under a domestic through bill of lading, the latter is separate and distinct from, and not supplemental to, the foreign ocean bill of lading under which the goods arrived in the United States.

Point B

A domestic rail carrier which issues its own separate, independent, through bill of lading for carriage of property from a United States port to a point in another state, is subject to the Carmack Amendment to the Interstate Commerce Act, even though the goods originated in a foreign country.

VI

Argument

Point A

When goods arrive from a foreign country at a port in the United States to which they are consigned, and from which they are shipped to a point in a different state under a domestic through bill of lading, the latter is separate and distinct from,

and not supplemental to, the foreign ocean bill of lading under which the goods arrived in the United States.

The goods in question were transported by an ocean carrier from Buenos Aires, Argentina, to the port of New Orleans where they were delivered in accordance with the ocean bill of lading which designated that port as the destination of the goods.[2] The domestic carrier subsequently received the property from a new shipper, and issued its through bill of lading[3] for carriage of the goods to Boston, over its own and specified connecting rail lines.

The ocean bill of lading was not a through bill of lading to Boston. The port of New Orleans was the terminal point of the carriage under that bill. It contained no provision whatever for the domestic carriage. The space provided in the ocean bill of lading for designation of an ultimate destination in the event of shipment beyond the port of discharge was left blank. The ocean freight was made payable at Buenos Aires and the rail rates were not stated in the bill. As succinctly pointed out by the dissenting judge of the Court of Appeals: "There is no privity between the ship and the Railroad."[4]

The fact that the ocean bill of lading named the First National Bank of Boston as consignee of the goods with notice of arrival to be given to Rudolf Reider in Boston, certainly does not have the effect of making the shipment a through one to that city. The ocean carrier was obli-

[2] R 10-12.
[3] R 5-6.
[4] Opinion, p. 8.

gated to deliver at New Orleans to order of the party named.

As far as the ocean carrier was concerned, its duties and obligations came to an end upon such delivery at the port of New Orleans. Had the owner of the cargo so desired, the shipment could have terminated at New Orleans; and having decided to transport the property to another point, he necessarily had to enter into a new contract of carriage with another carrier. Had not the domestic carrier issued its own bill of lading, the shipment could not have proceeded beyond New Orleans.

As stated by Judge Sibley in the Court of Appeals, the railroad "issued its receipt or bill of lading" for through shipment from Louisiana to Massachusetts "as it was bound to do" under the express terms of the Carmack Amendment itself.[5]

The issuance of the domestic through bill of lading, therefore, constituted a new and independent undertaking on the part of the rail carrier, having no relation whatever to the origin or prior movement of the goods.

Thus, the domestic carrier could not have issued, much less have intended to issue a bill of lading merely "in furtherance" of, or supplemental to, the original foreign shipment. That shipment effectively ceased at New Orleans before the cargo was delivered to the rail carrier.

Nor can the domestic carrier rely on insertion, in the rail bill of lading, of the phrase "X SS Rio Parana" as

[5] Opinion, p. 8.

indicating the contrary. The very recitals of the instant contracts of carriage, and the circumstances, outlined above, under which those contracts were issued, refute such a contention.

It is accordingly submitted that the domestic rail bill of lading for shipment from New Orleans to Boston, was entirely separate and distinct from the ocean bill of lading under which the goods arrived at New Orleans from Buenos Aires.

Point B

A domestic rail carrier which issues its own separate, independent, through bill of lading for carriage of property from a United States port to a point in another state, is subject to the Carmack Amendment to the Interstate Commerce Act, even though the goods originated in a foreign country.

The Carmack Amendment does not except a carrier from its provisions merely because the goods it transports began their movement in a foreign country. It may well be that a domestic carrier transporting a shipment to an interior point within the United States under a through bill of lading issued by a prior carrier in a foreign country, designating the interior point within the United States as the destination of the goods, is not governed by the Amendment.

The case of *Alwine vs Pennsylvania R. Co.*[6] so holds, but that is all it holds. That it does not decide the question

[6] 141 Pa. Super. 558.

presented here, as contended by the majority of the Court of Appeals, is apparent from the fact that the Pennsylvania court emphasized that it had a "*through* bill of lading" before it for consideration, itself italicizing the word "through".

Nor does any provision of the Carmack Amendment exempt a carrier from its provisions even if a shipment is "intended" for uninterrupted transportation to a point within the United States. It is not the character of the shipment but the character of the contracts of carriage, which governs applicability of the statute.

It may be conceded that under the decisions of *United States vs Erie R. Co.*[7] and *Texas & New Orleans R. R. Co. vs Sabine Tram Co.*[8] relied on by the majority of the court, and other similar cases,[9] the issuance of the bill of lading by the domestic carrier did not affect the "continuity and foreign character" of the shipment, to subject it to the exclusive right of Congress to regulate it or levy taxes thereon. Nevertheless, the issuance of the new, domestic, bill of lading brought the duties and liabilities imposed by the Carmack Amendment into immediate play. Not one of the cited cases involved the interpretation or applicability of the Carmack Amendment.

The appropriate test here is not different from that universally applied to ordinary interstate shipments to de-

[7] 280 US 98.
[8] 227 US 111.
[9] Railroad Commission of Louisiana vs Texas & Pacific Railway Company, 229 US 336; Illinois Central Railroad Company vs DeFuentes, 236 US 157; Western Oil Refining Company vs Lipscomb, 244 US 346.

termine whether a carrier which transports, under its own bill of lading, property received from a prior carrier, is an initial, or merely a connecting, carrier. The rule has been established firmly that when all of the obligations of a previous contract of carriage of property have terminated, the carrier transporting the property under its own, new and distinct, bill of lading is the receiving carrier within the meaning of the act.[10]

In *Mexican Light & Power Co., Limited vs Texas Mexican Ry. Co.*,[11] cited by the majority of the Court of Appeals, the original bill of lading called for carriage of the goods from Pennsylvania to the international boundary, and obligated the Texas Mexican Railway, as the terminal carrier, to convey the goods under the original bill of lading to that point. Upon receipt of the goods in Texas, the terminal carrier issued its own bill of lading beyond the boundary. An action was instituted under the Carmack Amendment against that carrier, as the initial carrier, issuer of the bill of lading for transit into Mexico where the goods were damaged.

This court held that the Texas Mexican Railway could act only as terminal carrier to the boundary under the original bill of lading; that it was without authority as such to issue a new bill of lading beyond its terminus; that such new bill of lading was accordingly void; and that the carrier could therefore not be treated as a receiving or initial one.

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[10] Rice vs Oregon Short Line R. Co., 33 Idaho 565; Baltimore & O. R. Co. vs Montgomery & Co., 19 Ga. App. 29; Barrett vs Northern Pac. Ry. Co., 29 Idaho 139.

[11] 331 US 731.

The cited case clearly has no bearing on the point at issue in the case at bar except in so far as it stands for the proposition that termination of carriage under one bill of lading, and commencement of new and independent carriage under another, as shown by the bills themselves, are the factors determinative of the legal effect of the bills.

In the case at bar, the domestic carrier was not an intervening or connecting carrier, as stated in the majority opinion with the suggestion that this action "attempts to hold that carrier responsible for damage that may have been caused by the foreign carrier". This statement is refuted by both the concurring and dissenting judges.[12] They point out that under the applicable Federal Bills of Lading Act,[13] plaintiff has the burden of proving good condition at New Orleans so that application of the Carmack Amendment "cannot give rise to the hardship suggested of making the domestic carriers subject to the Act responsible for the fault of an importing foreign vessel."[14]

In fine, the test of the applicability of the Carmack Amendment to a domestic carrier transporting such a shipment is not whether the shipment originated in a foreign country or was intended for uninterrupted transportation to a point within the United States, but whether the foreign transportation terminated at the United States port, and whether the domestic carrier transported the goods under its own separate, independent, contract of carriage.

[12] Opinion, pp. 6-7, 10-11.
[13] 49 USC 81.
[14] Opinion, p. 11.

As has been shown,[15] although the instant shipment had its origin in a foreign country, the domestic carrier transported the goods under its own separate, independent, contract of carriage. The carrier accordingly falls within the unequivocal provisions of the Act, for it is one "receiving property for transportation from a point in one State . . . to a point in another State". In the words of the dissenting judge of the Court of Appeals, "This case falls within the words Congress used."[16]

[15] Pp. 11-14 ante.
[16] Opinion, p. 11.

CONCLUSION

It is accordingly respectfully submitted that for the reasons stated in the petition and in this brief, a writ of certiorari should issue herein, to enable this court to settle the important question of interpretation of the Carmack Amendment to the Interstate Commerce Act, on which there was such sharp division among the judges of the Court of Appeals, and which has not heretofore been settled.

Respectfully submitted,

EBERHARD P. DEUTSCH,
Counsel for Petitioner.

New Orleans,
October, 1949.

DEUTSCH, KERRIGAN & STILES and
MALCOLM W. MONROE,
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